

CR15-00707-SRB

IVAN KOHLMANN-Part 2

3-2-16

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America,)	
)	
Plaintiff,)	
)	CR15-00707-PHX-SRB
vs.)	Phoenix, Arizona
)	March 2, 2016
Abdul Malik Abdul Kareem,)	
)	
Defendant.)	
)	
)	

BEFORE: THE HONORABLE SUSAN R. BOLTON, JUDGE
EXCERPT OF REPORTER'S TRANSCRIPT OF PROCEEDINGS
TESTIMONY: IVAN KOHLMANN - PART 2
JURY TRIAL - DAY #10
(Pages 172 through 197, Inclusive.)

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E X C E R P T O F P R O C E E D I N G S

THE COURT: Good morning, ladies and gentlemen.

Please sit down. The record will show the presence of the jury, counsel, and the defendant.

Mr. Maynard, you may continue your cross-examination of Mr. Kohlmann.

MR. MAYNARD: Thank you, Your Honor.

EVAN F. KOHLMANN, WITNESS, SWORN

CROSS EXAMINATION (cont'd)

BY MR. MAYNARD:

Q Mr. Kohlmann, did you speak with anybody from the FBI or the U.S. Attorney's Office after your testimony yesterday?

A I did.

Q Who did you speak with?

A I spoke with Kristin Brook.

Q And what was the discussion about?

A The nature was the arrangements regarding my testimony today and the VTC.

Q Anything else?

A I believe Ms. Brooks also asked me if I had returned a disc to the U.S. Attorney's Office.

Q Okay. Now, yesterday at lunch after you were mistaken on when the Prophet Drawing Contest in Garland was first announced, you told us that through the lunch hour you had determined it was a -- you determined the correct date. Do

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1 you recall that?

2 A That's correct, yes.

3 Q Okay. Did you speak with anybody from the U.S. Attorney's
4 Office or the FBI during the lunch hour yesterday?

5 A I didn't -- well, I did, actually. I spoke with Kristen
6 Brook briefly and I reviewed evidence that they had sent to
7 me.

8 Q And did she ask you to go back and review the evidence so
9 that you could get the correct date on the Muhammad Drawing
10 Contest?

11 A That's correct, yes.

12 Q Now, I believe when we ended yesterday we were talking --
13 I was asking you a few questions about how you ended up
14 preparing for your testimony.

15 You actually did prepare a report in this case,
16 correct?

17 A That's correct, I did.

18 Q Okay. And you prepared a draft, correct?

19 A Yes, that's correct. Yeah. An initial draft, that's
20 correct, yeah.

21 Q And then how long after that draft did you finalize your
22 report?

23 A I don't know. It would have been maybe a week or two
24 weeks afterwards. I was receiving evidence in pieces, so I
25 was -- basically, as I was going along, I was creating a new

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1 draft to incorporate new evidence that I had received.

2 Q Okay. You did not -- and I believe you testified to this
3 yesterday. You did not actually download digital information
4 from either cell phones or from other electronic -- other
5 electronic media that had been gathered by the FBI; is that
6 correct?

7 A Correct. That's correct, yes.

8 Q And therefore, you did not forensically review any of that
9 electronic -- those electronic devices?

10 A That's correct, yes.

11 Q Okay. So your testimony is not based upon a forensic
12 analysis. It's really based upon getting information from the
13 FBI and then telling the jury some historical background on
14 the individuals that you were asked about and certain writings
15 or videotapes?

16 A Yeah. I would say that's more or less correct, yes.

17 Q Okay. Now, yesterday --

18 Your Honor, I would like to put 497 on the overhead.

19 THE COURT: Right. And this is not admitted, but
20 used -- that's fine because it's just a larger version of a
21 picture of Miski that has already been admitted in evidence
22 and we're just using it because it's bigger.

23 BY MR. MAYNARD:

24 Q Do you recall yesterday there was -- you testified that --
25 to the best of your knowledge that the photograph that is on

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1 the screen is the photograph of Miski?

2 A I believe I said it's the photograph associated with
3 Miski. I have never met Miski, so I don't know if this is his
4 real photograph. But this is certainly the photograph
5 associated with his avatar.

6 Q Right. And that's part of the problem in doing Internet
7 research, correct?

8 A It depends. It can be, depending on the type of
9 information and the type of analysis.

10 Q You don't know whether Miski is actually a man or a woman,
11 correct?

12 A No. I know he's a man.

13 Q But you've not met him?

14 A That's correct.

15 Q And the only picture you've seen is the one that's on his
16 avatar?

17 A I believe so. I did work on an investigation involving
18 Mr. Miski back in 2008, but I don't recall ever seeing any
19 other images of him other than the one that's on his Twitter
20 avatar or Twitter account.

21 Q And a lot of what you do is you read what is put out by
22 people who profess to be terrorists on the Internet, correct?

23 A That's a piece of it, yeah, a large piece of it. Correct,
24 yes.

25 Q Now a couple of things real briefly.

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1 You've talked about yesterday you had published a
2 book in 2004, correct?

3 A That's correct, yes.

4 Q And that is the only book that you have published?

5 A That's correct, yes.

6 Q That book was published the same year that you graduated
7 from law school?

8 A That's correct, yes.

9 Q And is the book basically an extension of your senior
10 thesis at Georgetown?

11 A I wouldn't call it exactly an "extension," but it's
12 certainly built upon the foundations that were established in
13 my honors thesis, yes.

14 Q And it was first published by a press company in England
15 called Berg Press, correct?

16 A It's Oxford International Press, but it's Berg as an
17 imprint of Oxford International Press.

18 Q And Oxford International Press has nothing to do with
19 Oxford University?

20 A That's exactly correct, yes.

21 Q So when you tell us Oxford International Press, it is not
22 Oxford University Press, correct?

23 A No, not at all. They're two separate entities. They have
24 nothing to do with each other.

25 Q And you submitted your book to a number of university

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1 presses hoping to have them publish the book, correct?

2 A I think it's fair to say I submitted my book to a wide
3 range of presses in the U.S. and the UK.

4 Q Including presses associated with major American
5 universities?

6 A I think I only submitted it to one American university
7 which was the University of Pennsylvania.

8 Q And that was the university that you were graduating from
9 at that time?

10 A That's correct, yes.

11 Q They turned your book down?

12 A They didn't publish it but they never exactly responded,
13 so I don't know.

14 Q Now, you went through yesterday and talked about the
15 various individuals, the seven individuals that were on this
16 list which was Exhibit 351.

17 May I put it on the screen, Your Honor?

18 THE COURT: You may.

19 BY MR. MAYNARD:

20 Q And is it your understanding that this list of individuals
21 is somehow related to my client?

22 A It's my understanding it's related to this case, so I
23 suppose that's related to your client, but that's the extent.

24 Q Well, in your report you mentioned at least three separate
25 times that:

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1 I have been provided with a handwritten list of seven
2 individuals that I understand were relevant to the defendant.

3 Do you recall that?

4 A Yeah. That's correct.

5 Q Okay. Do you know who prepared this list?

6 A No, I do not.

7 Q Do you know if my -- if that's my client's handwriting or
8 not?

9 A No, I do not.

10 Q Do you even know if my client knows who these seven people
11 are?

12 A No, I do not.

13 Q Now, yesterday you told us that you were called by the
14 U.S. Attorney's Office, contacted by them, and you started
15 work on this, I believe, in either late October or early
16 November; is that correct?

17 A Approximately then, yes.

18 Q And is that when they started sending you information so
19 that you could start working on this report?

20 A I believe so, yes.

21 Q Okay. And then you completed your first draft sometime in
22 January or was it December?

23 A I don't recall to be honest. I think it was January, if I
24 remember correctly.

25 Q Do you have a copy of your report with you?

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1 A Unfortunately, no. I do not have it in front of me.

2 Q Okay. On the third page of your report --

3 May I read from his report or can I --

4 He can't see what I put on the monitor, can he?

5 THE COURT: No. He can't.

6 BY MR. MAYNARD:

7 Q Okay. On the third page of your report you indicate that
8 in January of 2016, the U.S. Attorney's Office for the
9 District of Arizona requested that I review various
10 evidentiary materials, including, but not limited to, FBI 302
11 documents and an FBI report outlining the contents of digital
12 media seized from the defendant.

13 Does that help to refresh your recollection when you
14 were actually contacted by the U.S. Attorney's Office here?

15 A No. That was a typo. I was contacted earlier than that.

16 Q Okay. So --

17 A I was asked to produce an expert report, I believe, in
18 January but I was contacted and provided evidence, I believe,
19 as early as December.

20 Q You go on to say:

21 I was further asked to opine on topics and issues
22 found in these evidentiary materials that would be relevant to
23 my particular area of expertise.

24 You just did a typo when you typed this up; is that
25 correct?

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1 A Well, no. It may just be a matter of interpretation. I
2 mean, I was asked to write the report in January but I was --
3 I was in communication with the U.S. Attorney's Office earlier
4 than that and I began receiving evidence, I believe, earlier
5 than that.

6 Q I thought you just told me that you had a draft done in
7 early January.

8 A No. I believe my draft was done in mid-January.

9 Q Okay. Now, you've talked about a number of individuals
10 from this list of seven that we've looked at. And I believe
11 you talked about Azzam being sort of the father of jihad; is
12 that correct?

13 A Shaykh Abdullah Azzam, correct, yes.

14 Q And he wrote a book called The Defense of Muslim Lands?

15 A That is one of his books, yes.

16 Q And, in fact, we sort of looked at it. I think you looked
17 at the cover and you talked about it being written in the
18 1980s, correct?

19 A That's correct, yes.

20 Q And when he wrote that, didn't he write it when the United
21 States was on the same side that he was against the Russians
22 in Afghanistan?

23 A Saying that he was on the same side of the United States
24 is not accurate. Abdullah Azzam rejected the United States
25 and insisted that he was not on the same side of the United

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1 States. Although it's true that they were both fighting
2 against the Soviets and against the Communist government in
3 Afghanistan.

4 Q Now, you went over numerous sermons and speeches with us
5 yesterday and I'm not going to go back over them all, I
6 promise.

7 Can you -- were you provided with information as to
8 where those sermons and speeches came from?

9 A I was provided with some information, although that's not
10 the focus of what I was looking at and I don't know how
11 detailed that information was.

12 There were names of computers and there were
13 evidentiary numbers and I'm aware in some cases where those
14 computers or where that evidence was taken or seized. But in
15 other cases, I'm not sure I'm entirely familiar with the
16 source or what the significance is to the case.

17 Q So you don't know whether my client actually viewed those
18 things or not?

19 MS. BROOK: Objection. Speculation.

20 THE COURT: Overruled. You may answer.

21 THE WITNESS: I don't know. No.

22 BY MR. MAYNARD:

23 Q And we spent time yesterday talking about Inspire Magazine
24 and is it -- I'm probably pronouncing this wrong. Is it
25 Dabiq?

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1 A Dabiq. Dabiq.

2 Q Both of those are jihadist magazines, correct?

3 A Correct, yes.

4 Q Inspire was actually put out by al-Qa'ida, yes?

5 A Correct.

6 Q And Dabiq was put out by ISIS, right?

7 A Accurate, yes, correct.

8 Q And there are many people who would read these magazines
9 that are not terrorists, including you.

10 A Well, I don't want to say the word "many," but there are
11 definitely people that read this that are not terrorists,
12 that's correct, yes.

13 Q You have no idea -- do you have any idea how many copies
14 of Inspire or Dabiq are read online?

15 A I don't think there's a way of getting an absolutely
16 accurate --

17 Q The answer is no, you don't have any idea?

18 A I have an idea, but I don't have -- I wouldn't say it's
19 fully accurate. It's more of a straw pole kind of idea.

20 Q Communists could be reading these magazines?

21 A Well, they do.

22 Q And academics could read these magazines?

23 A They certainly do.

24 Q People like you who look into the Deep Dark Web could read
25 the magazines?

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1 A That's also true.

2 Q Or people who were just sort of interested in what is
3 going on with al-Qa'ida could read Inspire?

4 A They could, but I don't know how wise that would be but
5 they could, that's true.

6 Q It may not be wise because people like you might think
7 that they're terrorists if they're reading those things,
8 correct?

9 A I don't think they have to worry about me. I think I'm
10 not the source of the problem.

11 Q Now, you told us at length yesterday about the cases that
12 you've testified in for the United States Government.

13 Do you recall that testimony? Is that a "yes"?

14 A Yes.

15 Q And --

16 A Yes.

17 Q And we went through not only how much you've made from
18 testifying, but in addition to that \$1.3 million that you've
19 received, you've also received approximately \$140,000 from the
20 Department of Defense?

21 A I believe so, yes.

22 Q And you have received an additional \$154,000 paid for
23 different things that you have done for the FBI?

24 A That's correct, yes.

25 Q So prior to testifying today, you've made actually more

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1 like \$1.5 million from the Government?

2 A Actually, you know, I'm not sure. I think the 1.3
3 includes the FBI fees, although I'm not a hundred percent
4 certain about that. It's possible.

5 Q I have a letter from the U.S. Attorney that indicates that
6 it does not. So --

7 A I would defer to the letter.

8 Q Okay. Now, were you retained as an expert in a case
9 called the *United States v. Babar Ahmad* filed in Federal
10 District Court in Connecticut?

11 A Yes, I was.

12 Q And you don't have that listed on your resume anywhere,
13 correct?

14 A Actually, I do. I have it listed under *Hassan Abu Jihaad*,
15 et al. as the two of them were co-conspirators in the same
16 investigation.

17 Q And how do you have it listed?

18 A Under *Hassan Abu Jihaad*, et al.

19 Mr. Abu Jihaad was the co-conspirator in that case
20 and was tried separately but it was the same investigation.

21 Q And this case was filed in the Federal District Court in
22 Connecticut in 2013 or 2014?

23 A The initial case I don't remember.

24 Mr. Ahmad's case I was also supposed to testify in,
25 but I don't recall when it was filed. I don't believe --

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1 yeah. I don't recall.

2 Q I'm looking at your resume.

3 Do you have your resume with you?

4 A Unfortunately, I do not have it in front of me right now.

5 Q Okay. I don't see it on there, but you think it is
6 somewhere?

7 A I testified in the *Abu Jihaad* case.

8 Q I see no cases filed --

9 A I believe it's in 2008 -- I would look in 2008 or '9 which
10 is when I believe Mr. Abu Jihaad's case went to trial.

11 Q Did you prepare a report in 2014 in the *Ahmad* case?

12 A Yes, I did. Yes, I did. Excuse me.

13 Q And was that report withdrawn?

14 A I have no idea.

15 Q Do you know an individual by the name of Dr. Marc Sageman?
16 Sageman?

17 A I do, yes.

18 Q And did Dr. Sageman write a report in opposition to the
19 report that you had written?

20 MS. BROOK: Objection. Hearsay.

21 THE COURT: The answer "yes" or "no" may be allowed.

22 THE WITNESS: I have no idea, Your Honor.

23 BY MR. MAYNARD:

24 Q So you have no idea whether he wrote such a report?

25 A No. I have no idea. I don't believe I ever saw any

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1 report issued by Dr. Sageman in that case.

2 Q And as we sit here, you don't know whether or not your
3 report was actually withdrawn or not?

4 A No, I do not.

5 MR. MAYNARD: I don't have any further questions.

6 THE COURT: Thank you. Ms. Brook?

7 MS. BROOK: Thank you, Your Honor.

8 MR. MAYNARD: May I approach the clerk?

9 THE COURT: Yes.

10 **REDIRECT EXAMINATION**

11 BY MS. BROOK:

12 Q Good morning.

13 A Good morning.

14 Q Defense counsel yesterday asked you about Anwar al-Awlaki
15 and how he is viewed by people in the United States after his
16 death.

17 Can you explain that a little.

18 A Yes. Anwar al-Awlaki's death in a drone strike was
19 obviously a major international news event and it was covered
20 very, very heavily in American media, as was the debate about
21 drone strikes killing American nationals.

22 As a result Anwar al-Awlaki became an extremely
23 controversial figure within the Muslim Community. He was
24 directly associated not just with al-Qa'ida and Yemen, but the
25 last sermons that he had issued before his death in which he

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1 had very aggressively in English called upon American Muslims
2 to go out and kill other people.

3 As a result there was a strong push from within the
4 Muslim Community to try to put aside Anwar al-Awlaki and to
5 avoid Anwar al-Awlaki because of the connotation of what his
6 name meant.

7 His name became synonymous with that of al-Qa'ida and
8 certainly most Muslims in the United States wanted to have
9 nothing to do with Anwar al-Awlaki or his ideas and certainly
10 did not want anyone to associate those ideas with them.

11 Q Defense counsel yesterday asked you about the expert
12 examination that you provided in this particular case.

13 In some cases that you have been involved in have you
14 examined forensically digital evidence?

15 MR. MAYNARD: Objection. It's beyond the scope.

16 THE COURT: Overruled. You may answer.

17 THE WITNESS: Yes, I have.

18 BY MS. BROOK:

19 Q And in some cases do you make examinations based upon FBI
20 reports of their forensic examinations?

21 A Yes. That's also correct.

22 Q In this case what did you do?

23 A In this case I did the latter.

24 Q At some point did you receive a piece of evidence from the
25 U.S. Attorney's Office here in Phoenix?

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1 A Several pieces, yes.

2 Q I'm talking about digital, digital evidence.

3 A Yes, I did.

4 Q What form was that in?

5 A I believe it was on a DVD or Blu-ray disc.

6 Q And was that a single disc?

7 A Yes. It was a single disc.

8 Q Did you conduct any examinations based on that disc?

9 A I was preparing to and I had copied the material onto a
10 local cache but then I was advised by the U.S. Attorney's
11 Office to cease my analysis and to return the disc to the U.S.
12 Attorney's Office.

13 Q So did you do forensic analysis that you rendered any
14 opinions on in this particular case?

15 A No, I did not. I followed the instructions given to me.

16 Q And what did you do with the disc?

17 A I returned the disc to the U.S. Attorney's Office via Fed
18 Ex.

19 Q Yesterday you mentioned destroying something. What was it
20 that was destroyed?

21 A It was -- initially, when I copied the material on to
22 begin the analysis, I copied it into a cache, a local cache.
23 I then removed that material from the cache so I no longer
24 have any copy of it.

25 Q It wasn't anything that you actually received in hard copy

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1 that was all sent back?

2 A No. Everything -- everything that I received on that disc
3 was sent back and any copies that were made to do the analysis
4 were destroyed. And like I said, I never actually got to
5 start doing the analysis.

6 Q And along those lines, in cases where you do receive
7 forensic evidence, to your knowledge, are those pieces of
8 evidence all copies, not originals?

9 A I don't think they are ever originals.

10 Q You mentioned talking about an avatar in discussions with
11 defense counsel in regards to Miski.

12 A Yes.

13 Q What's an avatar?

14 A An avatar online is when you create an identity for
15 yourself on a forum, on Twitter, on any other social
16 networking platform. As part of that avatar, you have to
17 create a name for yourself and often you have to provide an
18 image. And the idea is is that's your online identity. That
19 name and that image forms your online identity.

20 Those avatars become very important because it's like
21 your calling sign. It's like your name or your signature.
22 It's how people know who you are.

23 Q How do you verify the authenticity of people's claims to
24 be terrorists on the Internet?

25 A Well, in some cases there's ways of providing objective

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1 evidence. Some people simply are able to provide
2 authenticating information. They're able to provide video of
3 themselves holding weapons in a conflict zone with other known
4 wanted individuals.

5 Other individuals receive authentication or
6 accreditation from sources that are unimpeachable, i.e., ISIS
7 saying, yes, this is officially this person or officially that
8 person.

9 Or conversely, people that are al-Qa'ida or ISIS
10 members online who, again, have been authenticated, who
11 themselves can authenticate others.

12 But there are innumerable ways to figure out whether
13 or not someone is really what they say or coming close to it
14 anyway. Some pieces of that information can be difficult to
15 discern, particularly when it comes to photographs or avatar
16 information.

17 Q In regards to Miski in particular, that avatar, is that an
18 individual you have been able to verify the authenticity of?

19 A I believe it is, indeed, him.

20 Q And with the other individuals that we've spoken about in
21 this case, have you too been able to verify the authenticity
22 of them?

23 A Yes. There's almost zero doubt whatsoever that Junaid
24 Hussain is Abu Hussain al-Britani and that those were his
25 Twitter accounts. This information has been verified by

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1 International governments as well as the United States
2 Government.

3 Mujahid Miski, a/k/a Mohamed Abdullahi Hassan, his
4 account and his presence, again, has been verified by the U.S.
5 Government. In fact, he has surrendered in Somalia as of
6 recently, so we know he exists and we know that he was doing
7 this stuff.

8 So, again, there are ways of piecing together whether
9 or not someone is real and whether or not they're really
10 connected to an organization.

11 It can be challenging and it can take time, but with
12 the people that are involved in this particular case, I don't
13 think there's much of a question.

14 Q In the realm of keeping current and maintaining knowledge
15 of terrorist organizations, what is the best means or forum
16 with which to understand research and keep current with those
17 organizations and individuals?

18 MR. MAYNARD: Objection. Beyond the scope.

19 THE COURT: Overruled.

20 THE WITNESS: You have to go -- excuse me.

21 THE COURT: Hold on.

22 Overruled. You may answer.

23 THE WITNESS: Sorry, Your Honor.

24 The importance is is this. Is that if you want to
25 understand what these folks are talking about, if you want to

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1 understand their literature, if you want to understand their
2 videos, if you want to understand their ideology or their
3 theology, you have to go where those materials are present.

4 And these days the only place to find those materials
5 in the case of ISIS outside of a place like Syria or Iraq is
6 on the Internet. If you are not studying the activities of
7 these organizations and their communications on the Internet,
8 you really have no picture of what these organizations or
9 individuals are doing.

10 The best forum of determining what they're up to is,
11 of course, going physically to Syria and Iraq and interviewing
12 Abu Bakr al-Baghdadi, the leader of ISIS, or interviewing Abu
13 Mohammed al-Ashami, the official spokesman of ISIS. But
14 that's not an option. That's not an option for anyone.

15 Short of that, the best next option is to go to their
16 objective statements that are in the form of video, audio
17 testimonials, their magazines, and their official communiques.

18 This is what these people believe. There is
19 absolutely no doubt these things are authentic and legitimate.
20 Everyone acknowledges as much. And it's a widely, widely
21 known and established science within the study of these
22 organizations.

23 I'm hardly the only person that relies on this. In
24 fact, if you don't rely on this information, at least in part,
25 to understand what these groups are up to, you really don't

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1 have any eye into what they're doing.

2 Q Defense counsel asked you about Inspire Magazine, those
3 publications that we talked about yesterday, Issue 8, Issue 9.

4 To be clear, which branch of al-Qa'ida published
5 Inspire?

6 A It's known as al-Qa'ida in the Arabian Peninsula, AQAP,
7 otherwise known as al-Qa'ida in Yemen. It's al-Qa'ida's
8 faction in Yemen, which is the country south of Saudi Arabia
9 in the Arabian Peninsula.

10 MS. BROOK: May I have a moment?

11 THE COURT: Yes.

12 BY MS. BROOK:

13 Q The CD that you returned to the U.S. Attorney's Office in
14 Phoenix, how soon after you received it did you return it?

15 A I believe it was within days.

16 Q Do you remember which month that happened in?

17 A I believe it was late January, early February, but I'm not
18 exactly sure. I'd have to check my records.

19 MS. BROOK: I don't have any other questions.

20 THE COURT: Thank you.

21 And at this time may Mr. Kohlmann be excused as a
22 witness?

23 MS. BROOK: Yes.

24 MR. MAYNARD: No objection.

25 THE COURT: Thank you very much, Mr. Kohlmann. We

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1 are finished with you. I hope you feel better soon.

2 THE WITNESS: Thank you, Your Honor. I really
3 appreciate your patience.

4 (End of excerpt of proceedings.)

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C E R T I F I C A T E

I, ELIZABETH A. LEMKE, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 27th day of June, 2016.

s/Elizabeth A. Lemke
ELIZABETH A. LEMKE, RDR, CRR, CPE